

Egypt: Homosexuality is legal – but not allowed

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Interview with Islam Khalifa, attorney in Cairo

What does the judicial training in Egypt look like and what steps did you personally take to become a lawyer?

Regulations in Egypt only allows one to practice law after becoming a member of the Bar Association of Egypt or becoming a member of one of the judicial entities. However, no adequate training is given to law practitioners, neither attorneys nor judges, as both the Bar Association and judicial entities have long ago given up their role of producing competent individuals or developing the skills and legal knowledge of their members. Hence, in the absence of any institutional preparation, it is entirely up to law practitioners whether to develop and evolve or not, as there is no mentoring in this regard. In fact, it is not at all difficult to get a license to practice law in Egypt: the challenging part remains being able to competently handle your case as well as highlighting questionable laws. The Bar Association in Egypt, unlike most countries, does not require a mandatory exam or an obligatory postgraduate course for admission. It only requires some documents and a payment, which is considered to be a large sum for fresh graduates.

Ironically, the most important step I have taken to become a lawyer was working in a call center right after graduation in order to be able to submit the required payment. Once I got my license to practice in 2011, I worked as a corporate lawyer for couple of months. In 2012, after the numbers of civilians facing military trials increased, I joined a group called "No Military Trials for Civilians" with whom I experienced my first case before a military court. This trial was a transformative experience since it helped me to realize how far behind the Egyptian Judiciary system is lagging with regards to ensuring basic fair trial rights. After such this experience, I have worked with numerous NGOs where I found my passion in litigating cases related to freedom of expression and violations based on real or perceived sexual orientation.

Homosexuality in Egypt is not illegal. What are the members of the LGBTQ community accused of and who accuses them in the first place?

Indeed, homosexuality is not criminalized according to domestic laws in Egypt, however the LGBTQ community has been facing criminal charges of habitual debauchery, solicitation, and habitual prostitution, under Law Number 10 of 1961 on Prostitution and Debauchery. Provisions of this law do not clearly enumerate the practices that are prohibited, and instead relies on vague terms to formulate the material element of the crimes used to target members of the LGBTQ community, as there is no conclusive definition for debauchery within the Egyptian laws. As for who accuses them, as absurd as it may sound, there is a department in the Ministry of Interior in Egypt called the Department of Protecting the Public Morality, or "Morality Police". This department usually tricks victims into meeting for fake dates and then arrest them.

How do LGBTQ clients usually get in contact with you and what does a positive outcome of their cases depend on?

Usually the victims' relatives, the victims' friends, activists or NGO staff members report such incidents to us. As soon we get to know where the victims have been detained, we arrange visits with them in their place of detention. In some cases clients contact us after they follow our previous work on cases, which has been disseminated by the press or through social media. A positive outcome in such cases depends on combination of factors: the facts of the case itself, adequate representation, and the attention of the public.

Are the accusations of debauchery and prostitution also used to silence or convict political opponents in some cases in Egypt?

Not really. Activists tend to face numerous other criminal accusations such as violating the laws that govern protests, inciting mobs, and displaying force.

Do the accusations under the presidency of Abdel Fattah El-Sisi differ from those under Hosni Mubarak in terms of number and kind?

The Law Number 10 of 1961 on Prostitution and Debauchery, which is used to target members of the LGBTQ community, was issued in 1961 meaning that the charges in such cases have not been any different over the past 54 years. As for the number of cases, they have greatly increased over the past two years.

Was sexual freedom, and the rights associated with sexual freedom, part of the demands during the revolution 2011 in Tahrir Square?

No. The conservative way of thinking about homosexuality was still dominant to the collective mind of most of revolutionaries themselves in 2011.

Is there a difference between male and female homosexuality or trans people in relation to accusations and charges? If so, how would you explain this?

Yes. Legally speaking, "habitual debauchery" is a crime that is attached to male prostitution, meaning that men will be charged with this crime. Women, on the other hand, are charged with "habitual prostitution". However, both crimes have the same material elements and the same penalties. The terms "debauchery" and "prostitution" used within the Law Number 10 of 1961, has nothing to do with society's judgment on male or female homosexuality or the differences between male or female homosexuality. It is merely a linguistic difference in Arabic that has been adopted by the legislators. There are more cases of males accused than females, which could be attributed to so many factors including the way society considers male homosexuality as more shameful. Not to mention it is easier for male police officers to arrange fake dates to set up males rather than female members of the of the LGBTQ community. Regarding trans people, their charges comply with their reproductive organs. That's why, for example, a person who identifies as a female, but who was designated male at birth, might be charged with "habitual debauchery" and will be treated as a male in court and vice versa.

What is the professional and personal status of lawyers in Egypt accepting the kind of clients as you do?

The majority of lawyers, prosecutors, and judges are not so familiar with the Law Number 10 of 1961 on Prostitution and Debauchery. Moreover, the legal community remains part of the conservative society that tends to see members of the LGBTQ community as sinners, regardless of the facts in their cases.

How would you predict the future of the LGBTQ community in Egypt? Who can improve their legal situation and how?

Looking at the current situation, the upcoming years do not look promising. Yet, the legal situation could be changed by many different groups: members of the LGBTQ community themselves, law practitioners, as well as supporting groups. Such a change could be achieved through: raising legal and fundamental rights awareness; arguing the unconstitutionality of the Law Number 10 of 1961 on Prostitution and Debauchery; and grabbing the public's attention (domestically and internationally) to the violations committed against members of the LGBTQ community.

This Interview was conducted by Anna-Theresa Bachmann and Jannik Rienhoff in July 2015. It will appear in a German translation in Forum Recht 4/15.

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